

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc.)
(VELCO) and Green Mountain Power Corporation)
(GMP) for a certificate of public good, pursuant to)
30 V.S.A. Section 248, authorizing VELCO to)
construct the so-called Northwest Vermont)
Reliability Project, said project to include: (1))
upgrades at 12 existing VELCO and GMP)
substations located in Charlotte, Essex, Hartford,)
New Haven, North Ferrisburgh, Poultney, Shelburne,)
South Burlington, Vergennes, West Rutland,)
Williamstown, and Williston, Vermont; (2) the)
construction of a new 345 kV transmission line from)
West Rutland to New Haven; (3) the reconstruction)
of a portion of a 34.5 kV and 46 kV transmission line)
from New Haven to South Burlington; and (4) the)
reconductoring of a 115 kV transmission line from)
Williamstown to Barre, Vermont –)

Order entered: 7/13/2010

ORDER RE HERBICIDE USE AT CERTAIN PROJECT SUBSTATIONS

I. Introduction

This Order addresses the use of herbicides within certain substations associated with the Northwest Vermont Reliability Project (the "the NRP Project") by Vermont Electric Power Company, Inc. and Vermont Transco LLC (collectively, "VELCO"). The Public Service Board ("Board") concludes that VELCO may use herbicides at three affected substations provided that VELCO commissions an independent study of potential off-site herbicide flow at the Charlotte substation.

II. Procedural History and Positions of the Parties

On January 28, 2005, the Board issued an Order and Certificate of Public Good ("CPG") approving, with conditions, the NRP Project. The January 28 Order included the following findings concerning herbicide use in wetlands:

462. Vermont's Pesticide Advisory Council does not allow VELCO to apply herbicides within 30 feet of surface waters, but VELCO is allowed to apply herbicides within wetlands without surface water. Rowe/Disorda/Gilamn[sic]/Briggs reb. pf. at 6–7.

463. Herbicides should not be applied within the buffer of any wetland that contains standing water. Tr. 6/16/04 (Vol. I) at 22 (Quackenbush); exh. Towns Cross 270.

464. The Vermont Wetlands Rules establish buffer zones around Class I and Class II wetlands. The purpose of the buffer zones is "to protect those functions that make a wetland significant." For a Class II wetland, a fifty-foot buffer zone is established contiguous to the boundaries of the wetland, unless a buffer zone specific to a particular wetland is established by the Water Resources Board. Vermont Wetlands Rule, as adopted December 10, 2001, Section 4.3.¹

In the Order, those findings are followed by a Discussion that reads:

Shelburne and Charlotte argue in their briefs that VELCO should be prohibited from applying herbicides within the buffer zones of any wetlands that contain standing water. VELCO objects to this proposed requirement, relying on the Pesticide Advisory Council's determination that VELCO may apply herbicides within the buffer zones of such wetlands.

We conclude that prohibiting use of herbicides within the buffer zone of wetlands with surface water is justified. The proposed Project will impact hundreds of wetlands and the additional protection that will be afforded to a portion of these wetlands (those with standing water), will help in balancing the cumulative impact of the proposed Project. Requiring more stringent standards than the Pesticide Advisory Council will provide an environmental benefit without causing any meaningful (or perhaps even measurable) economic impact.²

1. Order issued 1/28/05 at 154.

2. Order issued 1/28/05 at 155.

The January 28, 2005, Order and CPG each contain the following condition:
"Construction, operation, and maintenance of the proposed Project shall be in accordance with the findings and requirements set forth in the Order."³

On May 8, 2009, a number of Charlotte residents submitted a letter to the Board regarding VELCO's use of herbicides at substations that were reviewed in this docket, including the Charlotte substation. On May 12, 2009, the Board issued a memorandum asking VELCO and the Agency of Natural Resources ("ANR"), and any other party that wished, to respond to the residents' letter.

ANR filed comments on June 2, 2009, claiming that it "is unaware of any herbicide applications at substations located within wetland buffers that contain standing water. Furthermore, ANR believes that such applications are inconsistent with the plain language of Finding 463."⁴

On June 26, 2009, VELCO stated that it "has ascertained that the Blissville Substation, which lies within the buffer zone of a wetland with standing water, has received herbicide treatments in 2007 and 2008, although no herbicides have been applied in 2009."⁵ VELCO asked for a Board ruling that its application of herbicides in substations is consistent with the intent of Finding 463. In the alternative, VELCO asked for a thirty-day period in which to file a motion to amend the Order.

On July 9, 2009, ANR filed a letter with the Board indicating that it recognizes the safety issues associated with non-herbicide treatment methods within substations and that ANR has not identified any off-site impacts from VELCO's herbicide application and is satisfied with VELCO's monitoring plan.⁶ ANR represented that the Department concurs in the ANR letter.

3. Order issued 1/28/05 at 227 (Condition 6); CPG issued 1/28/05 at 2 (Condition 5).

4. Letter dated June 2, 2009, from Michael Steeves, Esq., to Susan M. Hudson, Clerk of the Board, at 1.

5. Letter dated June 26, 2009, from S. Mark Sciarrotta, Esq., to Susan M. Hudson, Clerk of the Board, at 1.

6. Letter dated July 10, 2009, from Michael Steeves, Esq., to Susan M. Hudson, Clerk of the Board, at 1.

On July 10, 2009, the Town of Charlotte indicated that it "has no interest in advancing its interests in wetland protection at the expense of legitimate worker safety concerns."⁷

On August 18, 2009, the Board concluded that VELCO's application of herbicides within the buffer zone of a wetland that contains standing water is not allowed under the January 28, 2005, Order and CPG. The Board invited VELCO to file for a modification to the herbicide restrictions and sought comments on whether sanctions are appropriate for previous herbicide use at the Blissville substation.

On September 18, 2009, VELCO filed a Motion for Relief with respect to herbicide use at certain substations and requested a hearing. The Motion requested modification of the restriction in Finding 463 in the January 28, 2005, Order so that the restriction no longer applies to the three relevant NRP Project substations.

In its September 18, 2009, Motion for Relief, VELCO argued that a modification of the restrictions regarding herbicide use at substations is necessary for the following reasons:

1. Herbicide application at Project substations is essential to avoid serious risk to worker safety arising from the threat of electrocution posed by vegetation growth within substation yards;
2. Vegetation maintenance at substations through the use of herbicides is critical in maintaining system stability and reliability through prevention of damage to equipment and interference with line operation resulting from vegetation growth in substations;
3. VELCO's application of herbicides within substations results in no environmental harm, as herbicides are applied in a manner that limits migration into the wetland buffer from contained substation yards, and VELCO proposes to engage in monitoring to ensure no such harm results; and
4. VELCO's narrow request for relief maintains the balancing of cumulative Project impacts struck by the Board in Finding 463 because the request affects only a very small area of wetland buffer.⁸

VELCO asserted that the use of herbicides is the only reasonably available means for protecting worker safety by preventing electrocution via plant contact in the event of a fault in or near the

7. Letter dated July 10, 2009, from Joseph McLean, Esq., to Susan M. Hudson, Clerk of the Board, at 1.

8. VELCO Motion for Relief at 2.

substation⁹ and that "herbicide use is an accepted and recommended industry practice to control vegetation within substations."¹⁰

VELCO also represented that the Agency of Natural Resources ("ANR"), the Department of Public Service ("Department"), the Agency of Agriculture, Food and Markets ("AAFM") and professional consultants conducted a site visit to the Blissville Substation on July 1, 2009, and that ANR confirmed that no evidence of off-site impacts from herbicide application had been found.¹¹

In September 2009, VELCO retained Gilman and Briggs Environmental ("G&B") to perform an evaluation of the wetland and associated buffer at the Blissville substation. G&B concluded that "herbicide application inside the Blissville Substation . . . has had no impacts outside of the substation itself."¹²

VELCO also plans to add an annual assessment of the wetland at the Blissville substation to ensure that herbicide use does not result in negative wetland and buffer impacts and to submit the results of the assessments to ANR.¹³

On September 18, 2009, VELCO Senior Counsel S. Mark Sciarrotta filed a letter with respect to the Board's request for comments as to whether sanctions are appropriate. Mr. Sciarrotta's letter opined that sanctions are not warranted under the statutory criteria contained in 30 V.S.A. § 30.¹⁴

On October 9, 2009, the Department filed a letter recommending that VELCO's Motion for Relief be granted. The Department found VELCO's reasons for the use of herbicides in substations to be persuasive, and that relief from the condition appropriately balances protection

9. VELCO Motion for Relief at 7.

10. VELCO Motion for Relief, Affidavit of Donald Chase at 5.

11. VELCO Motion for Relief, Affidavit of Brian Connaughton at 4.

12. VELCO Motion for Relief, Affidavit of Brian Connaughton at 5 and Exh. BC-2 at 2.

13. VELCO Motion for Relief, Affidavit of Brian Connaughton at 5.

14. Letter dated September 18, 2009, from S. Mark Sciarrotta, Esq., to Susan M. Hudson, Clerk of the Board, at 7.

of wetland resources with substation worker safety.¹⁵ In its letter the Department also concluded that in this instance violations of a Board Order did not rise to a level that would warrant sanctions under Section 30.

On October 12, 2009, Lynrick Acres Area Neighbors ("LAAN"), which is not a formal party, filed a letter urging the Board to maintain the conditions in the January 28, 2005, Order and CPG.¹⁶ In the letter and attachments, LAAN proposed an integrated approach to weed control as an alternative to herbicide treatment. The integrated approach would include installing rodent barriers at entrance gates, adding a layer of construction-grade water-permiable geo-textile over the present layer of gravel, placing an additional three inches of crushed stone over the textile, and using infrared weeding or hand-weeding on a periodic basis. LAAN suggested that an independent study modeling potential off-site herbicide flow at the Charlotte substation might be helpful to the Board. LAAN identified Dr. George Pinder of the University of Vermont, an expert in modeling fluid movement in the environment, as someone who would be willing and capable of conducting such a study. LAAN stated that this modeling might be done at no charge by one of Dr. Pinder's advanced environmental engineering classes.

On October 19, 2009, VELCO filed a letter responding to the Department's and LAAN's positions. VELCO maintained that LAAN's recommendations failed to address the safety and reliability concerns established in VELCO's Motion. VELCO withdrew its request for a hearing.¹⁷

No other party filed comments on the issue of sanctions.

III. Discussion and Conclusion

In its August 19, 2009, Order the Board stated that the worker safety and system reliability concerns expressed by VELCO were not supported by the existing evidentiary record. In its subsequent Motion for Relief and supporting Affidavits, VELCO submitted persuasive

15. Letter dated October 9, 2009, from Sarah Hofmann, Esq., to Susan M. Hudson, Clerk of the Board, at 1.

16. Letter dated October 9, 2009, from the Residents of LAAN, to Susan M. Hudson, Clerk of the Board, at 1-2.

17. Letter dated October 19, 2009, from Megan Ludwig, Esq., to Susan M. Hudson, Clerk of the Board, at 1.

evidence that the careful application of herbicides at the affected substations presents the best opportunity to balance the need to protect both wetlands and workers and to maintain system reliability.

We have carefully considered the concerns and suggestions submitted by LAAN. However, we find that none of the non-herbicide treatments adequately mitigates concerns for worker safety and system reliability. Therefore, the Board conditionally grants the Motion for Relief with respect to herbicide use at certain Project substations. While herbicide use at these particular substations appears to be the best alternative, the full impact of such herbicide applications should be modeled and studied by an independent party. While VELCO plans to add an annual assessment of the wetland at the Blissville substation to ensure that herbicide use does not result in negative wetland and buffer impacts, we conclude that this assessment must be done at all Project substations that receive herbicide treatments.

VELCO's 2007 and 2008 applications of herbicides at the Blissville substation were contrary to the conditions of the January 28, 2005, Order and CPG. VELCO and the Department have suggested that these violations did not rise to a level that would merit sanctions under Section 30. We do not agree. VELCO ignored and violated the requirements of the January 28, 2005, Order and CPG. The importance of maintaining compliance with the terms and conditions of a CPG should not be lost on VELCO; accordingly, we conclude that VELCO's actions would warrant sanctions. However, in lieu of sanctions, the Board will require VELCO to commission and pay for a study to determine the potential for herbicide migration outside the Charlotte substation borders. We believe that the interests of Vermont ratepayers will be better served by the study than by the imposition of sanctions. VELCO is required to commission the study from an independent expert in the field of environmental modeling, and must obtain Board approval for the selected expert. VELCO shall file a proposed protocol for the study with the Board and Parties for Board approval. The study should be completed by no later than December 31, 2010, with results reported to the Parties in this Docket. The Board reserves the right to revisit the issue of herbicide application at the affected substations based on the outcome of this study. In addition, the requirement to conduct annual monitoring may be revisited after the results of the independent study are known.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. Vermont Electric Power Company, Inc. ("VELCO"), is granted relief from the Board's Order of January 28, 2005, with respect to herbicide use at certain Project substations. The Blissville, Charlotte and Shelburne substations shall be exempted from the restrictions of Finding 463 of that Order.

2. All herbicide applications shall be in accordance with the herbicide use permit issued by the Vermont Agency of Agriculture.

3. As a condition of the granted relief, VELCO shall commission an independent study of the potential for herbicide migration outside the Charlotte substation borders. This study shall be completed and filed no later than December 31, 2010. Before undertaking the study, VELCO shall file a proposed study protocol for Board approval.

4. VELCO shall conduct an annual assessment of wetlands at the Blissville, Charlotte and Shelburne substations to determine whether herbicide use has resulted in negative wetland and buffer impacts. The assessment results shall be submitted to the Board, the Department of Public Service and the Agency of Natural Resources. The Board may reconsider this requirement after the results of the independent study described in Paragraph 3, above, are known.

5. The Board may revisit the issue of herbicide application at the affected substations based on the outcome of the study described in Paragraph 3, above, and the annual wetland assessments described in Paragraph 4, above.

SO ORDERED.

Dated at Montpelier, Vermont, this 13th day of July, 2010.

_____)	
)	PUBLIC SERVICE
)	
s/ David C. Coen)	BOARD
)	
)	OF VERMONT
s/ John D. Burke)	

OFFICE OF THE CLERK

FILED: July 13, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)